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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

COMPILATION OF GENERAL RECOMMENDATIONS AND DECISIONS OF GENERAL INTEREST ADOPTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Note by the secretariat

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I. GENERAL RECOMMENDATIONS

According to article 9, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee may make suggestions and general recommendations based on the examination of the reports and information received from the States parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States parties. The Committee has so far adopted a total of 27 general recommendations.

General Recommendation I on article 4 of the Convention (fifth session, 1972)[1]

On the basis of the consideration at its fifth session of reports submitted by States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee found that the legislation of a number of States parties did not include the provisions envisaged in article 4 (a) and (b) of the Convention, the implementation of which (with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention) is obligatory under the Convention for all States parties.

The Committee accordingly recommends that the States parties whose legislation was deficient in this respect should consider, in accordance with their national legislative procedures, the question of supplementing their legislation with provisions conforming to the requirements of article 4 (a) and (b) of the Convention.

General Recommendation II on article 9 of the Convention (fifth session, 1972)[2]

The Committee has considered some reports from States parties which expressed or implied the belief that the information mentioned in the Committee's communication of 28 January 1970 (CERD/C/R.12), need not be supplied by States parties on whose territories racial discrimination does not exist.

However, inasmuch as, in accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, all States parties undertake to submit reports on the measures that they have adopted and that give effect to the provisions of the Convention and, since all the categories of information listed in the Committee's communication of 28 January 1970 refer to obligations undertaken by the States parties under the Convention, that communication is addressed to all States parties without distinction, whether or not racial discrimination exists in their respective territories. The Committee welcomes the inclusion in the reports from all States parties, which have not done so, of the necessary information in conformity with all the headings set out in the aforementioned communication of the Committee.

General Recommendation III on article 3 of the Convention (sixth session, 1972)[3]

The Committee has considered some reports from States parties containing information about measures taken to implement resolutions of United Nations organs concerning relations with the racist regimes in southern Africa.

The Committee notes that, in the tenth paragraph of the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have "resolved", inter alia, "to build an international community free from all forms of racial segregation and racial discrimination".

It notes also that, in article 3 of the Convention, "States parties particularly condemn racial segregation and apartheid".

Furthermore, the Committee notes that, in resolution 2784 (XXVI), section III, the General Assembly, immediately after taking note with appreciation of the Committee's second annual report and endorsing certain opinions and recommendations, submitted by it, proceeded to call upon "all the trading partners of South Africa to abstain from any action that constitutes an encouragement to the continued violation of the principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination by South Africa and the illegal regime in Southern Rhodesia".

The Committee expresses the view that measures adopted on the national level to give effect to the provisions of the Convention are interrelated with measures taken on the international level to encourage respect everywhere for the principles of the Convention.

The Committee welcomes the inclusion in the reports submitted under article 9, paragraph 1, of the Convention, by any State Party which chooses to do so, of information regarding the status of its diplomatic, economic and other relations with the racist regimes in southern Africa.

General Recommendation IV on article 9 of the Convention (eighth session, 1973)[4]

The Committee on the Elimination of Racial Discrimination,

Having considered reports submitted by States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination at its seventh and eighth sessions,

Bearing in mind the need for the reports sent by States parties to the Committee to be as informative as possible,

Invites States parties to endeavour to include in their reports under article 9 relevant information on the demographic composition of the population referred to in the provisions of article 1 of the Convention.

General Recommendation V on article 7 of the Convention (fifteenth session, 1977)[5]

The Committee on the Elimination of Racial Discrimination,

Bearing in mind the provisions of articles 7 and 9 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced that combating prejudices which lead to racial discrimination, promoting understanding, tolerance and friendship among racial and ethnic groups, and propagating the principles and purposes of the Charter of the United Nations and of the human rights declarations and other relevant instruments adopted by the General Assembly of the United Nations, are important and effective means of eliminating racial discrimination,

Considering that the obligations under article 7 of the Convention, which are binding on all States parties, must be fulfilled by them, including States which declare that racial discrimination is not practised on the territories under their jurisdiction, and that therefore all States parties are required to include information on their implementation of the provisions of that article in the reports they submit in accordance with article 9, paragraph 1, of the Convention,

Noting with regret that few States parties have included, in the reports they have submitted in accordance with article 9 of the Convention, information on the measures which they have adopted and which give effect to the provisions of article 7 of the Convention, and that that information has often been general and perfunctory,

Recalling that, in accordance with article 9, paragraph 1, of the Convention, the Committee may request further information from the States parties,

1. Requests every State party which has not already done so to include - in the next report it will submit in accordance with article 9 of the Convention, or in a special report before its next periodic report becomes due - adequate information on the measures which it has adopted and which give effect to the provisions of article 7 of the Convention;

2. Invites the attention of States parties to the fact that, in accordance with article 7 of the Convention, the information to which the preceding paragraph refers should include information on the "immediate and effective measures" which they have adopted, "in the fields of teaching, education, culture and information", with a view to:

(a) "Combating prejudices which lead to racial discrimination";

(b) "Promoting understanding, tolerance and friendship among nations and racial or ethnical groups";

(c) "Propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination" as well as the International Convention on the Elimination of All Forms of Racial Discrimination.

General Recommendation VI on article 9 of the Convention (twenty-fifth session, 1982)[6]

The Committee on the Elimination of Racial Discrimination,

Recognizing the fact that an impressive number of States has ratified, or acceded to, the International Convention on the Elimination of All Forms of Racial Discrimination,

Bearing in mind, however, that ratification alone does not enable the control system set up by the Convention to function effectively,

Recalling that article 9 of the Convention obliges States parties to submit initial and periodic reports on the measures that give effect to the provisions of the Convention,

Stating that at present no less than 89 reports are overdue from 62 States, that 42 of those reports are overdue from 15 States, each with two or more outstanding reports, and that 4 initial reports which were due between 1973 and 1978 have not been received,

Noting with regret that neither reminders sent through the Secretary-General to States parties nor the inclusion of the relevant information in the annual reports to the General Assembly has had the desired effect, in all cases,

Invites the General Assembly.

(a) to take note of the situation;

(b) to use its authority in order to ensure that the Committee could more effectively fulfil its obligations under the Convention.

General Recommendation VII relating to the implementation of article 4 of the Convention (thirty-second session, 1985)[7]

The Committee on the Elimination of Racial Discrimination,

Having considered periodic reports of States parties for a period of 16 years, and in over 100 cases sixth, seventh and eighth periodic reports of States parties,

Recalling and reaffirming its General Recommendation I of 24 February 1972 and its decision 3 (VII) of 4 May 1973,

Noting with satisfaction that in a number of reports States parties have provided information on specific cases dealing with the implementation of article 4 of the Convention with regard to acts of racial discrimination,

Noting, however, that in a number of States parties the necessary legislation to implement article 4 of the Convention has not been enacted, and that many States parties have not yet fulfilled all the requirements of article 4 (a) and (b) of the Convention,

Further recalling that, in accordance with the first paragraph of article 4, States parties "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination", with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention,

Bearing in mind the preventive aspects of article 4 to deter racism and racial discrimination as well as activities aimed at their promotion or incitement,

1. Recommends that those States parties whose legislation does not satisfy the provisions of article 4 (a) and (b) of the Convention take the necessary steps with a view to satisfying the mandatory requirements of that article;

2. Requests that those States parties which have not yet done so inform the Committee more fully in their periodic reports of the manner and extent to which the provisions of article 4 (a) and (b) are effectively implemented and quote the relevant parts of the texts in their reports;

3. Further requests those States parties which have not yet done so to endeavour to provide in their periodic reports more information concerning decisions taken by the competent national tribunals and other State institutions regarding acts of racial discrimination and in particular those offences dealt with in article 4 (a) and (b).

General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention (thirty-eighth session, 1990)[8]

The Committee on the Elimination of Racial Discrimination,

Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups,

Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.

General Recommendation IX concerning the application of article 8, paragraph 1, of the Convention (thirty-eighth session, 1990)[9]

The Committee on the Elimination of Racial Discrimination,

Considering that respect for the independence of the experts is essential to secure full observance of human rights and fundamental freedoms,

Recalling article 8, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination,

Alarmed by the tendency of the representatives of States, organizations and groups to put pressure upon experts, especially those serving as country rapporteurs,

Strongly recommends that they respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity.

General Recommendation X concerning technical assistance (thirty-ninth session, 1991)[10]

The Committee on the Elimination of Racial Discrimination,

Taking note of the recommendation of the third meeting of persons chairing the human rights treaty bodies, as endorsed by the General Assembly at its forty-fifth session, to the effect that a series of seminars or workshops should be organized at the national level for the purpose of training those involved in the preparation of State party reports,

Concerned over the continued failure of certain States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to meet their reporting obligations under the Convention,

Believing that training courses and workshops organized on the national level might prove of immeasurable assistance to officials responsible for the preparation of such State party reports,

1. Requests the Secretary-General to organize, in consultation with the States parties concerned, appropriate national training courses and workshops for their reporting officials as soon as practicable;

2. Recommends that the services of the staff of the Centre for Human Rights as well as of the experts of the Committee on the Elimination of Racial Discrimination should be utilized, as appropriate, in the conduct of such training courses and workshops.

General Recommendation XI on non-citizens (forty-second session, 1993)[11]

1. Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination. Article 1, paragraph 2, excepts from this definition actions by a State party which differentiate between citizens and non-citizens. Article 1, paragraph 3, qualifies article 1, paragraph 2, by declaring that, among non-citizens, States parties may not discriminate against any particular nationality.

2. The Committee has noted that article 1, paragraph 2, has on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that States parties are under an obligation to report fully upon legislation on foreigners and its implementation.

3. The Committee further affirms that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

General Recommendation XII on successor States (forty-second session, 1993)[12]

The Committee on the Elimination of Racial Discrimination,

Emphasizing the importance of universal participation of States in the International Convention on the Elimination of All Forms of Racial Discrimination,

Taking into account the emergence of successor States as a result of the dissolution of States,

1. Encourages successor States that have not yet done so to confirm to the Secretary-General, as depositary of the International Convention on the Elimination of All Forms of Racial Discrimination, that they continue to be bound by obligations under that Convention, if predecessor States were parties to it;

2. Invites successor States that have not yet done so to accede to the International Convention on the Elimination of All Forms of Racial Discrimination if predecessor States were not parties to it;

3. Invites successor States to consider the importance of making the declaration under article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications.

General Recommendation XIII on the training of law enforcement officials in the protection of human rights (forty-second session, 1993)[13]

1. In accordance with article 2, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination; further, States parties have undertaken to guarantee the rights listed in article 5 of the Convention to everyone without distinction as to race, colour or national or ethnic origin.

2. The fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their State has entered into under the Convention. Law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.

3. In the implementation of article 7 of the Convention, the Committee calls upon States parties to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented. They should also include respective information thereupon in their periodic reports.

General Recommendation XIV on article 1, paragraph 1, of the Convention (forty-second session, 1993)[14]

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights. The Committee wishes to draw the attention of States parties to certain features of the definition of racial discrimination in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination. It is of the opinion that the words "based on" do not bear any meaning different from "on the grounds of" in preambular paragraph 7. A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States parties by article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.

2. The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

3. Article 1, paragraph 1, of the Convention also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in article 5.

General Recommendation XV on article 4 of the Convention (forty-second session, 1993)[15]

1. When the International Convention on the Elimination of All Forms of Racial Discrimination was being adopted, article 4 was regarded as central to the struggle against racial discrimination. At that time, there was a widespread fear of the revival of authoritarian ideologies. The proscription of the dissemination of ideas of racial superiority, and of organized activity likely to incite persons to racial violence, was properly regarded as crucial. Since that time, the Committee has received evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference. As a result, implementation of article 4 is now of increased importance.

2. The Committee recalls its General Recommendation VII in which it explained that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response.

3. Article 4 (a) requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.

4. In the opinion of the Committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. This right is embodied in article 19 of the Universal Declaration of Human Rights and is recalled in article 5 (d) (viii) of the International Convention on the Elimination of All Forms of Racial Discrimination. Its relevance to article 4 is noted in the article itself. The citizen's exercise of this right carries special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular importance. The Committee wishes, furthermore, to draw to the attention of States parties article 20 of the International Covenant on Civil and Political Rights, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

5. Article 4 (a) also penalizes the financing of racist activities, which the Committee takes to include all the activities mentioned in paragraph 3 above, that is to say, activities deriving from ethnic as well as racial differences. The Committee calls upon States parties to investigate whether their national law and its implementation meet this requirement.

6. Some States have maintained that in their legal order it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination. The Committee is of the opinion that article 4 (b) places a greater burden upon such States to be vigilant in proceeding against such organizations at the earliest moment. These organizations, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is, of itself, to be punished.

7. Article 4 (c) of the Convention outlines the obligations of public authorities. Public authorities at all administrative levels, including municipalities, are bound by this paragraph. The Committee holds that States parties must ensure that they observe these obligations and report on this.

General Recommendation XVI concerning the application of article 9 of the Convention (forty-second session, 1993)[16]

1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken to submit, through the Secretary-General of the United Nations, for consideration by the Committee, reports on measures taken by them to give effect to the provisions of the Convention.

2. With respect to this obligation of the States parties, the Committee has noted that, on some occasions, reports have made references to situations existing in other States.

3. For this reason, the Committee wishes to remind States parties of the provisions of article 9 of the Convention concerning the content of their reports, while bearing in mind article 11, which is the only procedural means available to States for drawing to the attention of the Committee situations in which they consider that some other State is not giving effect to the provisions of the Convention.

General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (forty-second session, 1993)[17]

The Committee on the Elimination of Racial Discrimination,

Considering the practice of States parties concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced of the necessity to encourage further the establishment of national institutions to facilitate the implementation of the Convention,

Emphasizing the need to strengthen further the implementation of the Convention,

1. Recommends that States parties establish national commissions or other appropriate bodies, taking into account, mutatis mutandis, the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992, to serve, inter alia, the following purposes:

(a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) To review government policy towards protection against racial discrimination;

(c) To monitor legislative compliance with the provisions of the Convention;

(d) To educate the public about the obligations of States parties under the Convention;

(e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination;

2. Also recommends that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned.

General Recommendation XVIII on the establishment of an international tribunal to prosecute crimes against humanity (forty-fourth session, 1994)[18]

The Committee on the Elimination of Racial Discrimination,

Alarmed at the increasing number of racially and ethnically motivated massacres and atrocities occurring in different regions of the world,

Convinced that the impunity of the perpetrators is a major factor contributing to the occurrence and recurrence of these crimes,

Convinced of the need to establish, as quickly as possible, an international tribunal with general jurisdiction to prosecute genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto,

Taking into account the work already done on this question by the International Law Commission and the encouragement given in this regard by the General Assembly in its resolution 48/31 of 9 December 1993,

Also taking into account Security Council resolution 872 (1993) of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia,

1. Considers that an international tribunal with general jurisdiction should be established urgently to prosecute genocide, crimes against humanity, including murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts directed against any civilian population, and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto;

2. Urges the Secretary-General to bring the present recommendation to the attention of the competent organs and bodies of the United Nations, including the Security Council;

3. Requests the High Commissioner for Human Rights to ensure that all relevant information pertaining to the crimes referred to in paragraph 1 is systematically collected by the Centre for Human Rights so that it can be readily available to the international tribunal as soon as it is established.

General Recommendation XIX on article 3 of the Convention (forty-seventh session, 1995)[19]

1. The Committee on the Elimination of Racial Discrimination calls the attention of States parties to the wording of article 3, by which States parties undertake to prevent, prohibit and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction. The reference to apartheid may have been directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries.

2. The Committee believes that the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.

3. The Committee observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.

4. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports.

General Recommendation XX on article 5 of the Convention (forty-eighth session, 1996)[20]

1. Article 5 of the Convention contains the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination. Note should be taken that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list. At the head of these rights and freedoms are those deriving from the Charter of the United Nations and the Universal Declaration of Human Rights, as recalled in the preamble to the Convention. Most of these rights have been elaborated in the International Covenants on Human Rights. All States parties are therefore obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

2. Whenever a State imposes a restriction upon one of the rights listed in article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that neither in purpose nor effect is the restriction incompatible with article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to inquire further to make sure that any such restriction does not entail racial discrimination.

3. Many of the rights and freedoms mentioned in article 5, such as the right to equal treatment before tribunals, are to be enjoyed by all persons living in a given State; others such as the right to participate in elections, to vote and to stand for election are the rights of citizens.

4. The States parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention one by one.

5. The rights and freedoms referred to in article 5 of the Convention and any similar rights shall be protected by a State party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State party concerned to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

General Recommendation XXI on self-determination (forty-eighth session, 1996)[21]

1. The Committee notes that ethnic or religious groups or minorities frequently refer to the right to self-determination as a basis for an alleged right to secession. In this connection the Committee wishes to express the following views.

2. The right to self-determination of peoples is a fundamental principle of international law. It is enshrined in Article 1 of the Charter of the United Nations, in article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, as well as in other international human rights instruments. The International Covenant on Civil and Political Rights provides for the rights of peoples to self-determination besides the right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion or to use their own language.

3. The Committee emphasizes that in accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved by the United Nations General Assembly in its resolution 2625 (XXV) of 24 October 1970, it is the duty of States to promote the right to self-determination of peoples. But the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations. In this context the Committee draws the attention of Governments to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in its resolution 47/135 of 18 December 1992.

4. In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.

5. In order to respect fully the rights of all peoples within a State, Governments are again called upon to adhere to and implement fully the international human rights instruments and in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Concern for the protection of individual rights without discrimination on racial, ethnic, tribal, religious or other grounds must guide the policies of Governments. In accordance with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international documents, Governments should be sensitive towards the rights of persons belonging to ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth and to play their part in the government of the country of which they are citizens. Also, Governments should consider, within their respective constitutional frameworks, vesting persons belonging to ethnic or linguistic groups comprised of their citizens, where appropriate, with the right to engage in activities which are particularly relevant to the preservation of the identity of such persons or groups.

6. The Committee emphasizes that, in accordance with the Declaration on Friendly Relations, none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and possessing a Government representing the whole people belonging to the territory, without distinction as to race, creed or colour. In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a State. In this respect, the Committee follows the views expressed in An Agenda for Peace (paras. 17 and following), namely, that a fragmentation of States may be detrimental to the protection of human rights, as well as to the preservation of peace and security. This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned.

General Recommendation XXII regarding refugees and displaced persons (forty-ninth session, 1996)[22]

The Committee on the Elimination of Racial Discrimination,

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world,

Considering that the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination proclaim that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour, descent or national or ethnic origin,

Recalling the 1951 Convention and the 1967 Protocol relating to the status of refugees as the main source of the international system for the protection of refugees in general,

1. Draws the attention of States parties to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination as well as the Committee's General Recommendation XX (48) on article 5, and reiterates that the Convention obliges States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms,

2. Emphasizes in this respect that:

(a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;

(b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;

(c) All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;

(d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.

General Recommendation XXIII on the rights of indigenous peoples (fifty-first session, 1997)[23]

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

General Recommendation XXIV concerning article 1 of the Convention (fifty-fifth session, 1999)[24]

1. The Committee stresses that, according to the definition given in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples. If the Committee is to secure the proper consideration of the periodic reports of States parties, it is essential that States parties provide as far as possible the Committee with information on the presence within their territory of such groups.

2. It appears from the periodic reports submitted to the Committee under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, and from other information received by the Committee, that a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, colour, descent or national or ethnic origin different from the majority or from other groups within the population.

3. Some States parties fail to collect data on the ethnic or national origin of their citizens or of other persons living on their territory, but decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such. The Committee believes that there is an international standard concerning the specific rights of people belonging to such groups, together with generally recognized norms concerning equal rights for all and non-discrimination, including those incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the Committee draws to the attention of States parties that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.

4. The Committee recalls general recommendation IV, which it adopted at its eighth session in 1973, and paragraph 8 of the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3), inviting States parties to endeavour to include in their periodic reports relevant information on the demographic composition of their population, in the light of the provisions of article 1 of the Convention, that is, as appropriate, information on race, colour, descent and national or ethnic origin.

General recommendation XXV on gender-related dimensions of racial discrimination (fifty-sixth session, 2000)[25]

1. The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.

2. Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilization of indigenous women; abuse of women workers in the informal sector or domestic workers employed abroad by their employers. Racial discrimination may have consequences that affect primarily or only women, such as pregnancy resulting from racial bias-motivated rape; in some societies women victims of such rape may also be ostracized. Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.

3. Recognizing that some forms of racial discrimination have a unique and specific impact on women, the Committee will endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination. The Committee believes that its practices in this regard would benefit from developing, in conjunction with the States parties, a

more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.

4. Accordingly, the Committee, when examining forms of racial discrimination, intends to enhance its efforts to integrate gender perspectives, incorporate gender analysis, and encourage the use of gender-inclusive language in its sessional working methods, including its review of reports submitted by States parties, concluding observations, early warning mechanisms and urgent action procedures, and general recommendations.

5. As part of the methodology for fully taking into account the gender-related dimensions of racial discrimination, the Committee will include in its sessional working methods an analysis of the relationship between gender and racial discrimination, by giving particular consideration to:

(a) The form and manifestation of racial discrimination;

(b) The circumstances in which racial discrimination occurs;

(c) The consequences of racial discrimination; and

(d) The availability and accessibility of remedies and complaint mechanisms for racial discrimination.

6. Noting that reports submitted by States parties often do not contain specific or sufficient information on the implementation of the Convention with respect to women, States parties are requested to describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention. Data which have been categorized by race or ethnic origin, and which are then disaggregated by gender within those racial or ethnic groups, will allow the States parties and the Committee to identify, compare and take steps to remedy forms of racial discrimination against women that may otherwise go unnoticed and unaddressed.

General recommendation XXVI on article 6 of the Convention (fifty-sixth session, 2000)[26]

1. The Committee on the Elimination of Racial Discrimination believes that the degree to which acts of racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation is often underestimated.

2. The Committee notifies States parties that, in its opinion, the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.

General recommendation XXVII on discrimination against Roma (fifty-seventh session, 2000)[27]

The Committee on the Elimination of Racial Discrimination,

Having in mind the submissions from States parties to the International Convention for the Elimination of All Forms of Racial Discrimination, their periodic reports submitted under article 9 of the Convention, as well as the concluding observations adopted by the Committee in connection with the consideration of States parties' periodic reports,

Having organized a thematic discussion on the issue of discrimination against Roma and received the contributions of members of the Committee, as well as contributions by experts from United Nations bodies and other treaty bodies and from regional organizations,

Having also received the contributions of interested non-governmental organizations, both orally during the informal meeting organized with them and through written information,

Taking into account the provisions of the Convention,

Recommends that the States parties to the Convention, taking into account their specific situations, adopt for the benefit of members of the Roma communities, inter alia, all or part of the following measures, as appropriate.

A. Measures of a general nature

1. To review and enact or amend legislation, as appropriate, in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with the Convention.

2. To adopt and implement national strategies and programmes and express determined political will and moral leadership, with a view to improving the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organization.

3. To respect the wishes of Roma as to the designation they want to be given and the group to which they want to belong.

4. To ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.

5. To take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.

6. To take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination.

7. To take appropriate measures to secure for members of Roma communities effective remedies and to ensure that justice is fully and promptly done in cases concerning violations of their fundamental rights and freedoms.

8. To develop and encourage appropriate modalities of communication and dialogue between Roma communities and central and local authorities.

9. To endeavour, by encouraging a genuine dialogue, consultations or other appropriate means, to improve the relations between Roma communities and non-Roma communities, in particular at local levels, with a view to promoting tolerance and overcoming prejudices and negative stereotypes on both sides, to promoting efforts for adjustment and adaptation and to avoiding discrimination and ensuring that all persons fully enjoy their human rights and freedoms.

10. To acknowledge wrongs done during the Second World War to Roma communities by deportation and extermination and consider ways of compensating for them.

11. To take the necessary measures, in cooperation with civil society, and initiate projects to develop the political culture and educate the population as a whole in a spirit of non-discrimination, respect for others and tolerance, in particular concerning Roma.

B. Measures for protection against racial violence

12. To ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity.

13. To take measures to prevent use of illegal force by the police against Roma, in particular in connection with arrest and detention.

14. To encourage appropriate arrangements for communication and dialogue between the police and Roma communities and associations, with a view to preventing conflicts based on racial prejudice and combating acts of racially motivated violence against members of these communities, as well as against other persons.

15. To encourage recruitment of members of Roma communities into the police and other law enforcement agencies.

16. To promote action in post-conflict areas by States parties and from other responsible States or authorities in order to prevent violence against and forced displacement of members of the Roma communities.

C. Measures in the field of education

17. To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.

18. To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community to recruit school personnel from among members of Roma communities and to promote intercultural education.

19. To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education.

20. To act with determination to eliminate any discrimination or racial harassment of Roma students.

21. To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.

22. To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.

23. To take urgent and sustained measures in training teachers, educators and assistants from among Roma students.

24. To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.

25. To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.

26. To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them.

D. Measures to improve living conditions

27. To adopt or make more effective legislation prohibiting discrimination in employment and all discriminatory practices in the labour market affecting members of Roma communities, and to protect them against such practices.

28. To take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies.

29. To adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government; or training Roma in various skills and professions.

30. To develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing; to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance.

31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.

32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.

33. To ensure Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field.

34. To initiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups.

35. To prevent, eliminate and adequately punish any discriminatory practices concerning the access of members of the Roma communities to all places and services intended for the use of the general public, including restaurants, hotels, theatres and music halls, discotheques and others.

E. Measures in the field of the media

36. To act as appropriate for the elimination of any ideas of racial or ethnic superiority, of racial hatred and incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention.

37. To encourage awareness among professionals of all media of the particular responsibility to not disseminate prejudices and to avoid reporting incidents involving individual members of Roma communities in a way which blames such communities as a whole.

38. To develop educational and media campaigns to educate the public about Roma life, society and culture and the importance of building an inclusive society while respecting the human rights and the identity of the Roma.

39. To encourage and facilitate access by Roma to the media, including newspapers, television and radio programmes, the establishment of their own media, as well as the training of Roma journalists.

40. To encourage methods of self-monitoring by the media, such as through a code of conduct for media organizations, in order to avoid racial, discriminatory or biased language.

F. Measures concerning participation in public life

41. To take the necessary steps, including special measures, to secure equal opportunities for the participation of Roma minorities or groups in all central and local governmental bodies.

42. To develop modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to Roma communities.

43. To involve Roma communities and associations and their representatives at the earliest stages in the development and implementation of policies and programmes affecting them and to ensure sufficient transparency about such policies and programmes.

44. To promote more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests, for instance the education of their children and their participation in professional training.

45. To organize training programmes for Roma public officials and representatives, as well as for prospective candidates to such responsibilities, aimed at improving their political, policy-making and public administration skills.

The Committee also recommends that:

46. States parties include in their periodic reports, in an appropriate form, data about the Roma communities within their jurisdiction, including statistical data about Roma participation in political life and about their economic, social and cultural situation, including from a gender perspective, and information about the implementation of this general recommendation.

47. Intergovernmental organizations, in their projects of cooperation and assistance to the various States parties, as appropriate, address the situation of Roma communities and favour their economic, social and cultural advancement.

48. The High Commissioner for Human Rights consider establishing a focal point for Roma issues within the Office of the High Commissioner.

The Committee further recommends that:

49. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance give due consideration to the above recommendations, taking into account the place of the Roma communities among those most disadvantaged and most subject to discrimination in the contemporary world.

II. DECISIONS OF GENERAL INTEREST

Decision No. 1 (XL) concerning sources of information to be used by the Committee (fortieth session)

In regard to the use of information from different sources, the Committee will continue to make its suggestions and general recommendations on the basis of the examination of reports and information received from States parties as laid down in article 9, paragraph 2, of the Convention. At the same time, in examining the reports of States parties, members of the Committee must have access, as independent experts, to all other available sources of information, governmental and non-governmental.

Notes

[1] Contained in document A/8718. This recommendation is complemented by General Recommendations VII of 1985 and XV of 1993.

[2] Contained in document A/8718.

[3] Contained in document A/8718. This general recommendation, inspired by the historic situation of the racist regimes in southern Africa, has no current justification. It should be replaced by General Recommendation XIX of 1995, which also concerns article 3 of the Convention and the question of segregation in all countries.

[4] Contained in document A/9018. This recommendation is completed by General Recommendations VIII of 1990 and XXIV of 1999, as well as by paragraph 8 of the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.4).

[5] Contained in document A/3218.

[6] Contained in document A/3718.

[7] Contained in document A/4018. This recommendation is related to General Recommendation I of 1972 and complemented by General Recommendation XV of 1993.

[8] Contained in document A/4518. This recommendation is complemented by General Recommendation XXIV of 1999.

[9] Contained in document A/4518.

[10] Contained in document A/4618.

[11] Contained in document A/4818.

[12] Contained in document A/4818.

[13] Contained in document A/4818.

[14] Contained in document A/4818.

[15] Contained in document A/4818. This recommendation is related to General Recommendations I of 1972 and VII of 1985.

[16] Contained in document A/4818.

[17] Contained in document A/4818.

[18] Contained in document A/4918.

[19] Contained in document A/5018. This recommendation is related to General Recommendation III of 1972.

[20] Contained in document A/5118. This recommendation is complemented by General Recommendation XXII of 1996.

[21] Contained in document A/5118.

[22] Contained in document A/5118.

[23] Contained in document A/5218.

[24] Contained in document A/5418. This recommendation is related to General Recommendations IV of 1973 and VIII of 1990.

[25] Contained in document A/5518.

[26] Contained in document A/5518.

[27] Contained in document A/5518.